

**ORIGINAL**

DEPT. OF TRANSPORTATION  
DOCKETS

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

2003 MAR 21 A 11:10

\_\_\_\_\_  
Supplement to the Application of )  
Birdy Airlines N.V./S.A. )  
for Exemption Authority )  
Pursuant to 49 U.S.C. § 40109(c) )  
& )  
Statements of Authorization )  
For a Long-Term Wet Lease )  
& To Display American Airlines' Code )  
On Flights Operated By Birdy Airlines )  
On A Wet Lease Basis )  
For SN Brussels Airlines )  
\_\_\_\_\_

Docket No. OST-03-14571-3

**SUPPLEMENT TO THE APPLICATION OF BIRDY AIRLINES  
FOR EXEMPTION AUTHORITY PURSUANT TO 49 U.S.C. § 40109(C) &  
STATEMENTS OF AUTHORIZATION FOR A LONG-TERM WET LEASE &  
TO DISPLAY AMERICAN AIRLINES' CODE ON FLIGHTS OPERATED BY  
BIRDY AIRLINES ON A WET LEASE BASIS FOR SN BRUSSELS AIRLINES**

Communications with respect to the  
above should be addressed to:

Thomas J. Whalen  
Evelyn D. Sahr  
Geji T. George  
CONDON & FORSYTH  
1016 16<sup>th</sup> Street, N.W.  
Washington, D.C. 20036  
(202) 289-0500

Attorneys for Birdy Airlines

Dated: March 21, 2003

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

<hr/>		
Supplement to the Application of	)	
	)	Docket No. OST-03-14571
Birdy Airlines N.V./S.A.	)	
	)	
for Exemption Authority	)	
Pursuant to 49 U.S.C. § 40109(c)	)	
&	)	
Statements of Authorization	)	
For a Long-Term Wet Lease	)	
& To Display American Airlines' Code	)	
On Flights Operated By Birdy Airlines	)	
On A Wet Lease Basis	)	
For SN Brussels Airlines	)	
<hr/>	)	

**SUPPLEMENT TO THE APPLICATION OF BIRDY AIRLINES  
FOR EXEMPTION AUTHORITY PURSUANT TO 49 U.S.C. § 40109(C) &  
STATEMENTS OF AUTHORIZATION FOR A LONG-TERM WETLEASE &  
TO DISPLAY AMERICAN AIRLINES' CODE ON FLIGHTS OPERATED BY  
BIRDY AIRLINES ON A WET LEASE BASIS FOR SN BRUSSELS AIRLINES**

Birdy Airlines hereby submits this Supplement to its Application for exemption authority and for a Statement of Authorization for a long-term wet lease to SN Brussels Airlines and for a Statement of Authorization to display American Airlines' code on flights operated by Birdy Airlines on a wet lease basis for SN Brussels Airlines.

This Supplement consists of an original and three copies of Form 4523 signed by an officer of Birdy Airlines and a copy of OST Form 6411 issued by Marsh Ltd—Aviation Division as insurance brokers. All information provided in Birdy Airlines' Application for exemption authority pursuant and statements of authorization for a long-term wet lease and to display American Airlines' code on

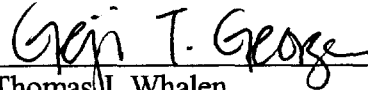
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flights operated by Birdy Airlines on a wet lease basis for SN Brussels Airlines, submitted on February 21, 2003, is hereby incorporated by reference.

WHEREFORE, Birdy Airlines respectfully requests that the Department supplement its Application for an exemption and statements of authorization with the attached information.

Dated: March 21, 2003

Respectfully submitted,



Thomas J. Whalen

Evelyn D. Sahr

Geji T. George

CONDON & FORSYTH

1016 16<sup>th</sup> Street, N.W. Suite 700

Washington, D.C. 20036

(202) 289-0500

Attorneys for Birdy Airlines

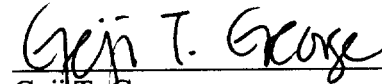
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Supplement to the Application of Birdy Airlines for Exemption Authority and Statements of Authorization was served via first class mail this 20<sup>th</sup> day of March, 2003 on the following:

<b>Marianne M. Myles</b> <b>U.S. Department of State</b> 2201 C Street, N.W., Room 5830 Washington, DC 20520	<b>Nick Sabatini</b> Director of Flight Standards Service <b>Federal Aviation Administration</b> 800 Independence Ave, S.W., Room 821 Washington, DC 20591
<b>Roger Fones</b> Antitrust Division <b>U.S. Department of Justice</b> 325 7 <sup>th</sup> Street, N.W. Suite 500 Washington, DC 20530	<b>National Air Carriers Association</b> Ronald Priddy 910 Seventeenth Street, N.W., Suite 800 Washington, DC 20006
<b>Delta Air Lines</b> Robert E. Cohn Shaw, Pittman 2300 N Street, N.W. Washington, DC 20004	<b>Northwest Airlines</b> Megan Rae Rosia 901 15th Street, N.W., Suite 310 Washington, DC 20005
<b>American Airlines</b> Carl Nelson, Jr. Associate General Counsel 1101 17 <sup>th</sup> Street, N.W., Suite 600 Washington, DC 20036	<b>US Airways, Inc.</b> Joel Stephen Burton Donald T. Bliss O'Melveny & Meyers LLP 555 13th Street, N.W., Suite 500 West Washington, DC 20004
<b>Continental Airlines</b> R. Bruce Keiner Crowell & Moring LLP 1001 Pennsylvania Avenue, N.W. Washington, D.C. 20004-2595	<b>Continental Airlines</b> Hershel Kamen 1600 Smith Street Suite HQSGV Houston, TX 77002
<b>Evergreen International Airlines</b> Richard P. Taylor Steptoe & Johnson 1330 Connecticut Ave, N.W., 10 <sup>th</sup> Floor Washington, D.C. 20036	<b>Federal Express</b> Nathaniel Breed, Esq. Shaw, Pittman 2300 N Street, N.W. Washington, D.C. 20037

<b>DHL Airways</b> Steven Lachter 1150 Connecticut Avenue, NW Suite 900 Washington, DC 20036	<b>UPS</b> David L. Vaughan, Esq. Kelley, Drye & Warren 1200 19 <sup>th</sup> Street, N.W., Suite 500 Washington, D.C. 20036
<b>United Airlines</b> Jeffrey A. Manley Bruce H. Rabinovitz Wilmer, Cutler & Pickering 2445 M Street, N.W. Washington, DC 20037-1420	<b>Federal Express</b> Angeline (Angie) Garbuzinski 3620 Hacks Cross Road Memphis, TN 38125-8800


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Geji T. George

2003 MAR 21 A 10:22

March 17, 2003

**VIA COURIER**

Dockets Section  
Department of Transportation  
400 Seventh Street, SW  
Room PL-401  
Washington, DC 20590

Re: Counterpart to Warsaw Agreement  
Docket OST-1995-236-

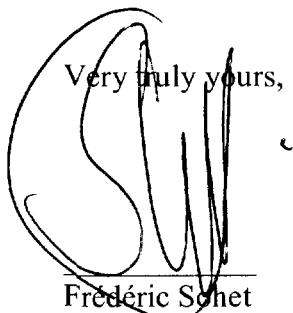
Dear Sirs:

Birdy Airlines submits one original and three copies Form 4523 in accordance with DOT regulations in conjunction with its Application for Exemption Authority and Statements of Authorization for a Long-term Wet Lease and to Display American Airlines code on flights operated by Birdy Airlines on a Wet Lease basis for SN Brussels Airlines in OST Docket No. 2003-14571. That application seeks authority to operate certain wet lease flights for SN Brussels Airlines between Belgium and points in Africa. None of the points included in the wet lease operations are within the United States.

SN Brussels accepts full responsibility to passengers on flights operated by Birdy under the wet lease and its waiver of the Warsaw Convention limitations with respect to liability for death or bodily injury to passengers applies to all passengers on the wet leased flights. Birdy Airlines does not issue tickets or have a contract of carriage with the passengers on wet leased flights, nor does it apply tariff conditions with respect to those passengers.

Nevertheless, Birdy encloses the attached Counterpart to the Warsaw Agreement. This counterpart is submitted without prejudice to Birdy's rights of indemnification from SN Brussels under the wet lease agreement. Further, Birdy reserves all rights of recourse against any other person or entity, including, without limitation, rights of contribution and indemnity.

Very truly yours,



Frédéric Schet  
Chief Financial Officer

2003 MAR 21 A 10: 22



Docket OST 95-236  
U.S. Department of Transportation  
Office of the Secretary of Transportation

### AGREEMENT

The undersigned carriers (hereinafter referred to as "the Carriers") hereby agree as follows:

1. Each of the Carriers shall, effective May 16, 1966, include the following in its conditions of carriage, including tariffs embodying conditions of carriage filed by it with any government:

"The Carrier shall avail itself of the limitation of liability provided in the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw October 12th, 1929, or provided in the said Convention as amended by the Protocol signed at The Hague September 28th, 1955. However, in accordance with Article 22(1) of said Convention, or said Convention as amended by said Protocol, the Carrier agrees that, as to all international transportation by the Carrier as defined in the said Convention or said Convention as amended by said Protocol, which, according to the contract of Carriage, includes a point in the United States of America as a point of origin, point of destination, or agreed stopping place

- (1) The limit of liability for each passenger for death, wounding, or other bodily injury shall be the sum of US \$75,000 inclusive of legal fees and costs, except that, in case of a claim brought in a State where provision is made for separate award of legal fees and costs, the limit shall be the sum of US \$58,000 exclusive of legal fees and costs.
- (2) The Carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20(1) of said Convention or said Convention as amended by said Protocol.

Nothing herein shall be deemed to affect the rights and liabilities of the Carrier with regard to any claim brought by, on behalf of, or in respect of any person who has willfully caused damage which resulted in death, wounding, or other bodily injury of a passenger."

2. Each Carrier shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention, or the Convention as amended by the Hague Protocol, and by the special contract described in paragraph 1, the following notice, which shall be printed in type at least as large as 10 point modern type and in ink contrasting with the stock on (i) each ticket; (ii) a piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or (iii) on the ticket envelope:

#### "ADVICE TO INTERNATIONAL PASSENGER ON LIMITATION OF LIABILITY

Passengers on a journey involving an ultimate destination or a stop in a country other than the country of origin are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to the entire journey, including any portion entirely within the country of origin or destination. For such passengers on a journey to, from, or with an agreed stopping place in the United States of America, the Convention and special contracts of carriage embodied in applicable tariffs provide that the liability of

[certain  
[name of carrier) and certain other] carriers parties to such special contracts for death of or personal injury to passengers is limited in most cases to proven damages not to exceed US \$75,000 per passenger, and that this liability up to such limit shall not depend on negligence on the part of the carrier. For such passengers traveling by a carrier not a party to such special contracts or on a journey not to, from, or having an agreed stopping place in the United States of America, liability of the carrier for death or personal injury to passengers is limited in most cases to approximately US \$10,000 or US \$20,000.

The names of Carriers parties to such special contracts are available at all ticket offices of such carriers and may be examined on request.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention or such special contracts of carriage. For further information please consult your airline or insurance company representative."

3. [This Agreement was filed with the Civil Aeronautics Board of the United States. The Board approved it by Order E-23680, adopted May 13, 1966. The Agreement (Agreement 18900) became effective May 16, 1966. On January 1, 1985, this Agreement became the responsibility of the Department of Transportation (DOT) by operation of law.]

4. This Agreement may be signed in any number of counterparts, all of which shall constitute one Agreement. Any Carrier may become a party to this Agreement by signing a counterpart hereof and depositing it with DOT.

5. Any Carrier party hereto may withdraw from this Agreement by giving twelve (12) months' written notice of withdrawal to DOT and the other Carriers parties to the Agreement.

\*Either alternative may be used.

(Signature and Date)

(Printed Name and Title)

(Name and Address of Carrier)

**Birdy Airlines S/ANV**  
**SOHET Frédéric**  
**CFO**

OST Form 4523 (Formerly CAB Form 263)

**Birdy Airlines S/ANV**  
**Rue de Livourne 13**  
**1060 Bruxelles**  
**TVA-BTW BE 476 987 503**  
**RCB/HRB 656 433**

2003 MAR 21 A 10:22



Docket OST 95-236  
U.S. Department of Transportation  
Office of the Secretary of Transportation

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DEPT. OF TRANSPORTATION  
DOCKETS

2003 MAR 21 A 10:22



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(Signature and Date)

(Printed Name and Title)

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Birdy Airlines S.A/NV  
SOHET Frédéric  
CFO

OST Form 4523 (Formerly CAB Form 263)

**Birdy Airlines S.A/NV**  
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TVA-BTW BE 476 987 503  
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Docket OST 95-236  
U.S. Department of Transportation  
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Birdy Airlines SA/NV  
SOHET Frédéric  
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OST Form 4523 (Formerly CAB Form 263)

**Birdy Airlines SA/NV**  
Rue de Livourne 13  
1060 Bruxelles  
TVA-BTW BE 476 987 503  
RCB/HRB 656 433

THIS CERTIFICATE CANCELS AND REPLACES ANY PREDATED CERTIFICATE (OST FORM) ISSUED ON BEHALF OF THE INSURED NAMED BELOW.

Reference : C02/BIRD/00009



U.S. Department of  
Transportation

Office of the Secretary  
of Transportation

## AGENCY DISPLAY OF ESTIMATED BURDEN

The public reporting burden for this collection of information is estimated to average 30 minutes per response. If you wish to comment on the accuracy of the estimate of make suggestions for reducing this burden, please direct your comments to the Department of Transportation at the following address:

U.S. Department of Transportation  
Office of Aviation Analysis, X-56  
400 7th Street SW.  
Washington, D.C. 20590

OMB No. 2106-0030 Expires 2-28-01

FOREIGN AIR CARRIERS  
CERTIFICATE OF INSURANCE

POLICIES OF INSURANCE FOR AIRCRAFT ACCIDENT BODILY INJURY  
AND PROPERTY DAMAGE LIABILITY

FILING INSTRUCTIONS: File an original of this form with the FAA, Air Transportation Div., AFS-260, 800 Independence Ave., SW, Washington, D.C. 20591.

(Please type information, except signatures.)

THIS CERTIFIES THAT: **CERTAIN UNDERWRITERS AT LLOYD'S AND VARIOUS INSURANCE COMPANIES VIA  
MARSH LTD - AVIATION DIVISION (AS BROKERS)**

(Name of Insurer)

has issued a policy or policies of Aircraft Liability Insurance to **BIRDY AIRLINES S.A.**

**of NCI BUSINESS CENTER, CULLIGANLAAN 1B, 1831 DIEGEM, BELGIUM**

(Name and address of Insured Foreign Air Carrier)

effective from **1<sup>st</sup> NOVEMBER, 2002** until ten (10) days after written notice from the insurer or carrier of the intent to terminate coverage is received by the Department of Transportation.

NOTE: Part 205 of the Department's Regulations does not allow for a predetermined termination date, and a certificate showing such a date is unacceptable.

1. The Insurer (Check one)

- ☐ is licensed to issue aircraft insurance policies in the United States;  
☒ is licensed or approved by the government of **UNITED KINGDOM** to issue aircraft insurance policies, or  
☐ is an approved surplus line insurer in the State(s) of \_\_\_\_\_

2. The insurer assumes, under the policy or policies listed below, aircraft accident liability insured to minimums at least equal to the following during operation, maintenance, or use of aircraft in "foreign air transportation" as that term is defined 49 U.S.C. 40102. (Complete applicable section(s) below):

A. CANADIAN CHARTER AIR TAXI OPERATIONS WITH PART 294 AUTHORITY ONLY

The aircraft covered by this policy have: (1) 30 or fewer passenger seats and a maximum payload capacity of 7,500 pounds or less; and/or (2) a maximum authorized takeoff weight on wheels of no more than 35,000 pounds. (Check separate or combined coverage as appropriate):

☐ Separate Coverages:

Policy No.	Type of Liability	Minimum Limit	
		Each person	Each Occurrence
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	\$75,000	\$2,000,000 *(See note)
_____	Passenger Bodily Injury	\$75,000	\$75,000 x 75% of total number of passenger seats installed in aircraft

- ☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. \_\_\_\_\_ Amount of Coverage \_\_\_\_\_ U.S. Dollars

- ☐ This Policy covers CARGO operations only and excludes passenger liability insurance.

\* NOTE: If the aircraft covered by this policy have more than 30 passenger seats or more than a maximum payload capacity of 7,500 pounds, the minimum limit per occurrence shall be \$20,000,000

**B. FOREIGN AIR CARRIERS OPERATING SMALL AIRCRAFT**

The aircraft covered by this policy are SMALL AIRCRAFT (i.e., with 60 or fewer passenger seats or with a maximum payload capacity of 18,000 pounds or less). (Check separate or combined coverage as appropriate):

☐ Separate Coverages:

Policy No.	Type of Liability	Minimum Limit	
		Each person	Each Occurrence
	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	\$300,000	\$2,000,000
	Passenger Bodily Injury	\$300,000	\$300,000 x 75% of total number of passenger seats installed in aircraft

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. \_\_\_\_\_ Amount of Coverage \_\_\_\_\_ U.S. Dollars

☐ This policy covers CARGO operations only and excludes passenger liability insurance.**C. FOREIGN AIR CARRIERS OPERATING LARGE AIRCRAFT**

The aircraft covered by this policy are LARGE AIRCRAFT (i.e., with more than 60 passenger seats or with a maximum payload capacity of more than 18,000 pounds). (Check separate or combined coverage as appropriate):

☐ Separate Coverages:

Policy No.	Type of Liability	Minimum Limit	
		Each person	Each Occurrence
	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	\$300,000	\$20,000,000
	Passenger Bodily Injury	\$300,000	\$300,000 x 75% of total number of passenger seats installed in aircraft

☒ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. AA039402 Amount of Coverage AT LEAST THE REQUIRED MINIMUM STATED ABOVE U.S. Dollars

☐ This policy covers CARGO operations only and excludes passenger liability insurance.

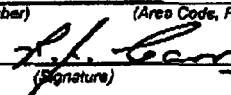
3. The policy or policies listed in this certificate insure(s) (Check One):

- ☒ Operations conducted with all aircraft operated by the Insured  
☐ Operations conducted with the following types of aircraft:  
☐ Operations with the following aircraft: (Use additional page if necessary)

Make and Model

FAA or Foreign Flag  
Registration No.

4. Each policy listed in this certificate meets or exceeds the requirements in 14 CFR Part 205.

(Name of Insurer)	MARSH LTD - AVIATION DIVISION
(Address)	NO. 1, THE MARSH CENTRE,
(City, State, Zip Code)	LONDON E1 8DX
Contact (person who can verify the effectiveness of the coverage)	R.J. CARR - AUTHORISED SIGNATORY
(Area Code, Phone Number)	020 7357 1000 / 020 7929 2705
(Area Code, FAX Number)	
(Signature, if applicable)	
(Date)	6 <sup>th</sup> March, 2003